151.

SUPREME COURT OF THE UNITED STATES.

No. 67.

WM. SEARIGHT, COMMISSIONER AND SUPERINTENDENT OF THE CUMBERLAND ROAD WITHIN THE STATE OF PENNSYLVANIA, PLAINTIFF IN ERROR,

vs.

WM. B. STOKES AND LUCIUS W. STOCKTON, WHO HAVE SURVIVED RICHARD C. STOCKTON, DEFENDANTS IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

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J. & G. S. GIDEON, Printers.

UNITED STATES, *Western District of Pennsylvania, sct.*

[L. S.] The President of the United States to the marshal of the Western District of Pennsylvania, greeting:

Whereas William Searight, commissioner and superintendent of the Cumberland road, and within the State of Pennsylvania, a citizen of Pennsylvania, has this day sued out his writ of error to a certain judgment in case recovered against him on the 29th day of November, 1842, in the circuit court of the United States for the western district of Pennsylvania aforesaid, by William B. Stokes and Lucius W. Stockton, who have survived Richard C. Stockton, deceased, citizens of Maryland, returnable in the Supreme Court of the United States on the second Monday of January next. These are, therefore, to command you that you make known to the said William B. Stokes and Lucius W. Stockton, who have survived Richard C. Stockton, deceased, citizens of Maryland, that they be and appear to the said writ of error, in the said Supreme Court, on the first day of the next term thereof, to hear an assignment of errors thereof; and hereof fail not at your peril; and how you shall have executed this writ of citation, make return to our clerk of our said western district of Pennsylvania, at Pittsburgh, on the rule day of said court for the month of January next.

Witness the honorable Thomas Irwin, judge of the United States for the said district, at Pittsburgh, this twenty-ninth day of November, A. D. 1842, and in the sixty-seventh year of the Independence of the said United States. TH. IRWIN.

Citation.

Dec. 3, 1842. I do hereby authorize Wm. Morris, esq., sheriff of the county of Fayette, to serve this citation.

H. C. BOSLER,
Marshal N. D. of Pa.

Served the within citation upon L. W. Stockton, by reading the original and leaving with him a true copy, this 9th day of December, 1842.

WM. MORRIS,
Sheriff of Fayette county.

Service sworn to December 9, 1842.

ABRA. D. KAINE, *Pro.*

In the Circuit Court of the United States in and for the Western District of Pennsylvania, in the third circuit.

Copy of docket entries.—November Term, 1842.

FLENNIKEN.—WILLIAM SEARIGHT, commissioner and superintendent of the Cumberland Road within the State of Pennsylvania, a citizen of Pennsylvania, 26 vs. Narr. HOWELL.—WILLIAM B. STOKES, LUCIUS W. STOCKTON, who have survived Richard C. Stockton, deceased, citizens of Maryland.	Amicable action in case entered 29th November, 1842, with plea of defendant endorsed, and on same day, statement of case in the nature of a special verdict.

1842, November 29th. Court direct judgment to be entered in favor of defendant.

Same day, writ of error allowed and issued.

Same day, citation issued and proceedings sent up.

Copy of Narr.

Circuit Court of the United States for the Western District of Pennsylvania.

William B. Stokes and Lucius W. Stockton, who have survived Richard C. Stockton, partners and joint contractors, under the name of Stockton & Stokes, citizens of Maryland, were summoned to answer William Searight, commissioner and superintendent of the Cumberland road within the State of Pennsylvania, and a citizen of Pennsylvania; for that whereas the said William B. Stokes and Lucius W. Stockton, surviving partners as aforesaid, to wit, on the first day of December, in the year of our Lord one thousand eight hundred [and] thirty-eight, were indebted to the said commissioner and his predecessors in office in the sum of six thousand dollars, lawful money of the United States, as well for money by the said plaintiff before that time laid out, expended, and paid for the said defendants at their special instance and request, and for other money by the said plaintiff before that time lent and advanced to the said defendants at their like request, and for other money by the said defendants before that time had and received to the use of the plaintiff, and for the like sum of money due and owing by the said defendants before that time to the said plaintiff in consideration thereof; and being so indebted, the defendants afterwards, to wit, on the day and year last aforesaid, undertook, and then and there, to wit, at Fayette county, within the western district of the State of Pennsylvania, faithfully promised the said plaintiff to pay him the said last mentioned sum of money which they, the said defendants, should be thereunto afterwards required. Although the same to him, the said plaintiff, to pay, or any part thereof, although often requested, the said defendants have altogether refused, and still

doth refuse, to the damage of the said plaintiff $6,000; and, therefore, he brings suit.

Endorsed.—No. 26, of Nov. T., 1842. Filed Nov. 29, 1842. William Searight, commissioner, &c., vs. William B. Stokes et al. Narr. in case.

I appear for defendants, and plead non assumpsit.

JOSHUA B. HOWELL, *Att'y for Def'ts.*

Copy of agreement of parties.

CIRCUIT COURT OF THE UNITED STATES,
Western District of Pennsylvania.

WILLIAM SEARIGHT, commissioner and superintendent of the Cumberland road within the State of Pennsylvania, a citizen of Pennsylvania,
vs.
WILLIAM B. STOKES and LUCIUS W. STOCKTON, who have survived Richard C. Stockton, partners and joint contractors, under the name of Stockton and Stokes, citizens of Maryland.
} In case.

It is agreed between the parties aforesaid that a suit, as above stated, be docketed by consent as an amicable action to try the right of the plaintiffs to recover, and the liability of the defendant to pay the one-half of the regularly established tolls for the passage of his mail line of coaches on so much of the Cumberland road as lies within the State of Pennsylvania, from the 13th day of June, 1836, to the day of , that the plaintiff file a declaration in the several money counts to which defendant shall plead the general issue, and that the case shall be tried on a statement of facts signed by the counsel for the parties respectively, as it is the desire of both parties that the judgment of the Supreme Court of the United States shall be had upon the points of law presented in the case. It is further agreed, that the party against whom the judgment of the circuit court shall be rendered, shall be entitled to sue out his writ of error to the Supreme Court within thirty days after the rendition of judgment in the circuit court without filing the usual bond, and that no proceedings shall in such case be had upon the judgment in the circuit court until the decision of the Supreme Court be pronounced, and its mandate issued and docketed, provided a writ of error is sued out as above stated; and upon judgment becoming conclusive in favor of the plaintiff, then, by rule of court, it shall be referred to two citizens of Fayette county, Pennsylvania, to be nominated by the parties respectively, who shall agree upon a third, who, as auditors of said court, shall examine and report to said court the amount due for the tolls for which suit is brought, upon which, subject to exceptions as usual, judgment shall be finally rendered.

No objections to be taken by either party to the form of action and pleadings, nor to the competency of the parties to sue or to be sued as above.

R. P. FLENNIKEN, *for Pl'ff.*
RICH. S. COX, *for Def'ts.*

Endorsed.—No. 26, of Nov. T., 1842. Searight, commissioner, &c., vs. William B. Stokes et al. Filed November 29, 1842.

Statement of case.

CIRCUIT COURT OF THE UNITED STATES,
Western District of Pennsylvania.

WILLIAM SEARIGHT, commissioner and superintendant of the Cumberland Road within the State of Pennsylvania, a citizen of Pennsylvania,

vs.

WILLIAM B. STOKES, and LUCIUS W. STOCKTON, who have survived, RICHARD C. STOCKTON, dec'd., citizens of Maryland.

In case. Statement of case in the nature of a special verdict.

It is agreed that this case be submitted to the court on the following statement of facts as if found by a jury.

The plaintiff is the commissioner and superintendant of so much of the Cumberland or National road as lies within the State of Pennsylvania duly appointed under and by virtue of the laws of that State in such case provided, and is a citizen of said State. The defendants and Richard C. Stockton, whom they have survived, are and were citizens of Maryland. The defendants, together with the said Richard, whom they have survived, were joint partners in certain contracts for carrying the mail of the United States hereunto annexed. The route described in said contracts extended over so much of the road called the Cumberland or National road as lies within the Commonwealth of Pennsylvania. Said contracts were duly executed between the Postmaster General of the United States thereto lawfully authorized by the laws of the United States, and said contractors in conformity with law. The mail of the United States was transported by said contractors in accordance with the provisions of said contracts during the time therein stipulated in carriages constructed in conformity with the directions and requirements of the Postmaster General; said carriages were constructed and accommodated as well for the transportation of the mail, as for carrying passengers and their baggage, but the number of said passengers was limited so as not to interfere with or impede the transportation of the mail, and in no case was any passenger carried, when the transportation of the mail would be thereby retarded or interfered with. The said National road within the territorial limits of Pennsylvania was so far and to such extent as the constitution and laws of the United States, and the State of Pennsyl-

vania vested the same, the property of the United States, and had been constructed under the authority of said laws by the United States. The constitution and laws of the United States, and of the Commonwealth of Pennsylvania bearing upon this subject, and the executive proceedings of the same respectively, are to be deemed and considered part of this agreed case. No tolls were paid by said contractors for or upon any vehicle or carriages employed or used by them for the transportation of said mail during the period of the existence of said contracts, notwithstanding said carriages ordinarily as aforesaid carried passengers, and said contractors received the passage money therefor for their own use.

Under the laws of the United States and of the State of Pennsylvania so much of said Cumberland or National road as lies within the limits of the State of Pennsylvania was ceded by the United States, and accepted by Pennsylvania, upon the terms and conditions expressed and contained in said statutes. Since the year 1835, the State of Pennsylvania has held said road under and by virtue of said laws, and has performed the terms and conditions therein prescribed in every respect, unless the imposition and claim of tolls as herein stated is so far an infraction of the compact created by said laws. Payment of tolls imposed by and under the laws of Pennsylvania has been demanded of said contractors by the plaintiff and his predecessors in office for and on account of their carriages so as aforesaid employed in the transportation of the mail with passengers so carried as aforesaid; such payment of tolls has been resisted and refused by said contractors on the ground that the carriages employed in the transportation of the mail of the United States on said road were not under the said compact and laws legally liable to the payment of said tolls.

The said carriages employed in the transportation of the mail were four wheel carriages drawn by four horses each, and they ran over said route and through the six gates which are upon said road within the said State of Pennsylvania twice daily, being their eastern and western routes. The full rates of toll established by law upon said road in Pennsylvania for a daily line of four horse post coaches or stages were at each of the said six gates, including the eastern and western routes, daily

From 1 January, 1836, to 1 April, 1837,	-	40 cents.
April, 1837, to 1839,	-	60 cents.
1839, to present time	-	100 cents.

If upon the foregoing state of facts, the court shall be of opinion that the defendants are liable to pay tolls for their carriages so employed in the transportation of the mail of the United States, judgment to be entered for the plaintiff for the sum of $6,000. If it shall be of opinion that the said carriages so employed are not subject to the payment of said tolls, then judgment to be entered for the defendants.

R. P. FLENNIKEN, *for Plffs.*
RICH'D. S. COX, *for Defendants.*

Precipe for Writ of Error.

Issue writ of error returnable to January term, 1843, of the Supreme Court for William Searight, commissioner and superintendent of the Cumberland road within the State of Pennsylvania, a citizen of Pennsylvania, against William B. Stokes and Lucius W. Stockton, who have survived Richard C. Stockton, partners and joint contractors under the name of Stockton and Stokes, citizens of Maryland, in a judgment in case in the circuit court of the United States for the 3d circuit, held at Pittsburg at November term, 1842.

R. P. FLENNIKEN,
Attorney for plaintiff in error.

Pittsburg, Nov. 29, 1842.
To E. J. ROBERTS, esq.,
Clerk of the Circuit Court.

Copy of Writ of Error.

UNITED STATES OF AMERICA, } *sct.*
Western District of Pennsylvania. }

The President of the United States to the judges of the circuit court of the United States for the western district of Pennsylvania.

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said court before you between William Searight, commissioner and superintendent of the Cumberland road within the State of Pennsylvania, a citizen of Pennsylvania, plaintiff, and William B. Stokes, Lucius W. Stockton, who have survived Richard C. Stockton, dec., a citizen of Maryland, defendant, a manifest error hath happened to the great damage of the said plaintiff as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that then under your seal distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the Supreme Court of the United States to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may correct that error, and do what of right and according to the laws and customs of the United States should be done.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States at Pittsburgh, this twenty-ninth day of November, A. D. 1842, and in the sixty-seventh year of the independence of the said United States.

E. J. ROBERTS,
Clerk U. S. Cir. Ct. W. D. of Pa.